IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10595 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANLAL DURLABHBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DEVANG LATHIGARA for Petitioner(s) : 1,
MS FALGUNI PATEL AGP for Respondent(s) : 1,
MS PREETI S PARMAR for Respondent(s) : 2,
MR SV PARMAR for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,
MS SEJAL K MANDAVIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged legality of an order dated 16th June, 2004

passed by the State Government. By the impugned order the State Government conveyed to the petitioner that its application dated 27/11/2002 for fixing lump-sum payment in lieu of panchayat tax is not accepted since the same is not in proper format.

2. The petitioner Shri Shivan Vibhag Sahkari Khand Udyog Mandli Ltd., has raised the question of payment of tax to the respondent no.2 - Shivan Gram Panchayat herein. The petitioner made an application on 27/11/2002 under Section 201 under the Panchayat Act, 1993 requesting for fixation of lump-sum amount towards taxes payable to the petitioner to the respondent no.2. It is the case of the petitioner that the factory premises set up by the petitioner contains several facilities which have been created by the petitioner itself such as drainage etc. which otherwise the panchayat was required to provide for. It is, therefore, the case of the petitioner that in view of the provisions of Section 201 of the Panchayat Act, 1993, the Gram Panchayat ought to have agreed to accept the lump-sum payment in lieu of the taxes otherwise due and payable. Panchayat having not shown willingness to do so, the petitioner applied to the State Government to fix the lump-sum in view of the

provisions of Sub Section 2 of Section 201 of the said Act.

3. On the other hand on behalf of respondent no.2 Panchayat Mr. Parmar submitted that panchayat is collecting house taxes on the houses constructed by the petitioner and which are located within the limits of respondent no.2 panchayat and the factory and its surroundings are not situated within the limits of the respondent no.2 panchayat. He, therefore submitted that in the present case provisions of Section 201 of Gujarat Panchayats Act, 1993 would not apply at all.

4. Learned AGP Ms. Falguni Patel submitted that even now if the petitioner applied in proper format to the Government afresh, such an application will be considered in accordance with law after hearing the Gram Panchayat.

5. Section 201 of the Gujarat Panchayats Act reads as follows:

> 201. Lump-sum contribution by factories in lieu of taxes levied by panchayat:-(1) Subject to any rules that may be made under this Act, and regard being had to the fact that a factory itself provides in the factory area all or any of the amenities which such panchayat provides, village panchayat may

> arrive at an agreement with the sanction of the State Government to receive a lump-sum contribution in lieu of all or any of the taxes levied by the panchayat.
> (2)Where no such agreement as is referred to in sub-section (1) can be reached, the matter may be referred to the State Government in the manner prescribed and the State Government may after giving to the panchayat and the factory concerned an opportunity of being heard decide the amount of such contribution. The decision of the State Government shall be binding on the panchayat and the factory concerned.
> (3)In the case of any matter referred to the State Government under sub-section (2), the State Government may, subject to such condition as it may think fit to impose having regard to the circumstances of the case, by order in writing direct the panchayat to stay the collection or recovery from the factory of all or any of the taxes until the State Government decides the matter under sub-section (2).

5.1 From the reading the above mentioned sections it would appear that the panchayat with the sanction of the State Government may agree to receive a lump-sum contribution in lieu of all or any of the taxes levied by the panchayat from the factory, regard being had to the fact that the factory itself provides for any of the amenities which such panchayat provides. Sub Section (2) of Section 201 further provides that where no such agreement is reached the matter may be referred to the State Government and the State Government after giving to the panchayat and the factory concerned an opportunity of being heard decide the amount of such contribution.

5.2 Combine reading of Sub Section (1) and (2) of Section 201 makes it clear that there is scope of collection of lump-sum contribution in lieu of the panchayat tax either with the agreement of the panchayat or as may be fixed by the Government in case where the premises concerned is a factory. To this extent, I am inclined to agree with the submission of learned advocate Shri Parmar that for other premises other than factory provisions of Section 201 are not applicable. In the present case, no factual clarity is available on record to permit this Court to conclude the question regarding the tax being demanded by the Panchayat from the petitioner. The ultimate question, therefore, is left open to the State Government to decide. For the above purpose, it is provided that the petitioner shall apply to the panchayat in accordance with rule for fixation of lump-sum contribution and such an application shall be processed by the panchayat and forwarded further as provided under the Act and the Rules made thereunder. Finally in case it is found that there is no agreement between the petitioner and respondent no.2 which appears to be the ultimate possible conclusion, the State Government shall take a final decision in this regard.

If the petitioner makes such an application within a period of two weeks from today, the respondents shall expedite the respective decisions and will endevour to conclude the issue preferably within a period of four months from its receipt initially by the Gram Panchayat. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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